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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/023,457	12/17/2001	Laurie Couture-Dorschner	KCC-16,588	2264
35844	7590	03/09/2006	EXAMINER	
PAULEY PETERSEN & ERICKSON 2800 WEST HIGGINS ROAD HOFFMAN ESTATES, IL 60195			STEPHENS, JACQUELINE F	
			ART UNIT	PAPER NUMBER
			3761	
DATE MAILED: 03/09/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/023,457

Applicant(s)

COUTURE-DORSCHNER ET AL.

Examiner

Jacqueline F. Stephens

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 December 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14, 19-32, 36-40, 44-52, 56, 57, 59 and 60 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 49-51 and 59 is/are allowed.
- 6) ☒ Claim(s) 1-14, 19-32, 36-40, 44-48, 52, 56, 57 and 60 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input checked="" type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. <u>10/</u> |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 12/20/05 have been fully considered but they are not persuasive. Applicant argues Sauer does not disclose a frangible bond. Given its plain meaning, a frangible bond is one that is easily broken, which Sauer discloses. The argued limitation of a nonrefastenable bond is not claimed and is directed to how the bond is used. There is no specific structure cited or claimed that would render the bond nonrefastenable.

As to the limitation of the frangible bond being 'outward' of the fastening component, as indicated in the interview of 10/7/05, giving the broadest reasonable interpretation and without bringing limitations from the specification into the claims, the fastener 42 is 'away' from the fastener 44 and is, therefore, considered outward from one another.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 2, 4-7, 14, 19, 21, 28, 32, 36-40, 44, 45, 52, 59, and 60 are rejected under 35 U.S.C. 102(b) as being anticipated by Sauer USPN 5624428.

As to claims 1, 19, 36, 52, 59, and 60, Sauer discloses a disposable garment comprising at least one front panel 22 comprising a fastening component and a nonwoven substrate defining an attachment surface (at front section 22, Figure 1; col. 4, lines 49-52; col. 7, lines 24-30). The side panels for the front and back panels are considered side areas of the front and back regions outside of the absorbent core (Figures 1 and 2). The side panels have a nonwoven substrate (col. 4, line 49-52 and col. 5, line 21). The article further comprises at least one back panel 24 comprising a mating fastening component 42; frangible bonds 44 connecting the front panel and the back panel, the fastening component and the mating fastening component being in the unfastened condition (Figure 2); wherein the frangible bonds 44 are located outward of the fastening component and the mating component 42 (Figure 2). As broadly as claimed, the frangible bonds are aligned with the fastening component and mating fastening components.

As to claims 2, 4, and 21, see waist opening 40 and leg opening, Figure 1.

As to claims 5-7, 28, 44, and 45, Sauer discloses the expansion member 46 has a width 58 that ranges from 1.2-10 cm. The primary bond is shown to be equidistant to the expansion member in width (Figure 4). The examiner has reasonable factual basis to conclude the frangible bond 42 is also equidistant in width to the expansion member (Figure 4 shows the frangible connected to the free end 50 of the expansion member). Thus, Sauer also discloses the frangible bond has a width 58 that ranges from 1.2-10 cm, which includes the claimed ranges for the width of the frangible bond.

As to claims 14 and 32, the frangible bond 44 is located on expansion member 46, which extends from the back panel (Figure 2).

As to claims 37 and 38, Sauer discloses the fastening components are bonded to the outer surface or inner surface of the chassis (col. 7, lines 24-30).

As to claims 39 and 40, Sauer discloses the attachment surface comprises complementary loop fasteners (Figures 2 and 3 at front portion 22 and col. 7, lines 30-37-).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to

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consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 3, 20, 22-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sauer USPN 5624428.

As to claims 3, 20, 22-27, Sauer discloses the present invention substantially as claimed. However, Sauer is silent on the distance between the fastening components and the distal edges of the front and back panels. Sauer teaches various configurations for the fastening components to provide a fastening system suitable for maintaining the diaper in engaging the front and back panels so that the diaper can encircle the waist and hips of the wearer (col. 7, lines 22-41 and col. 9, lines 1-9). One having ordinary skill in the art would be able to determine through routine experimentation the ideal size of the fasteners and distance from the distal edges of the panels to maintain the article in a fastened condition in use.

7. Claims 8-13, 29-31, 46-48, 56, and 57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sauer USPN 5624428 in view of Elsberg USPN 6287287.

Sauer discloses the present invention substantially as claimed. Sauer discusses the secondary (frangible) fasteners are subjected to shear type forces and peel type forces when the primary fastener is disengaged and the article is being pulled up or down over the hips of the wearer (col. 9, lines 60-67; col. 10, lines 25-37). However, Sauer is silent as to the strength of the bonds. Elsberg discloses passive side bonds having a strength within the claimed ranges to provide a shear strength that prevents separation of the

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front and rear waist regions from each other during the application and use of the diaper (Elsberg col. 17, lines 17-46). It would have been obvious to one having ordinary skill in the art to provide the Sauer invention with the claimed strength since both Sauer and Elsberg teach it is desirable to prevent separation of the diaper as the garment is pulled up or down over the hips of the wearer.

Allowable Subject Matter

8. Claim 49-51 and 59 are allowed.

Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacqueline F. Stephens whose telephone number is (571) 272-4937. The examiner can normally be reached on Monday-Friday 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Jacqueline F. Stephens
Primary Examiner
Art Unit 3761

March 6, 2006